IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2229 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOPAL PARSHRAM JAMNALAL PRAJAPATI. R/O 37,ANAND - Petitioner(s)

Versus

COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MR HEMANT B RAVAL for Petitioner,
RULE SERVED for Respondent(s) : 1, 3,
MR AY KOGJE AGP for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/05/2007

ORAL JUDGMENT

In this petition, the petitioner has challenged detention order dated 7th December, 2006 passed by the Commissioner of Police, Ahmedabad City in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as “PASA”).

2. The detaining authority was of the opinion that the activities of the petitioner are prejudicial to the public order and his detention is, therefore, necessary. To form such an opinion the detaining authority took into account five criminal cases of theft lodged against the petitioner.

3. Learned advocate Shri Raval for the petitioner submitted that the order of detention is illegal. It was submitted that the opinion formed by the detaining authority is not sustainable in the eye of law. Except for five criminal cases involving the petitioner in offence punishable under Sections 454, 457 etc. of Indian Penal Code, there is no further material on record. He submitted that it may be a case of disturbance of law and order situation. However, the activities of the petitioner cannot be branded as one giving rise to the question of public order.

4. In this regard reliance is placed on the decision of this Court in the case of **Ashokbhai Jivraj@Jivabhai Solanki v.Plice Commissioner, Surat & ors. reported in 2000 (1) G.L.H. 393**. In the said decision Division Bench found that the detaining authority could not have invoked the power of detaining the detenu. Forming the opinion, it was found that that the detenu was involved in as many as four cases of theft, despite which, the Division Bench was of the opinion that the cases against the detenu are already been registered. The case would fall under the maintenance of law and order and not public order. The Division Bench, therefore, opined that the subjective satisfaction arrived at by the detaining authority cannot be said to be legal and valid.

5. On the other hand learned AGP Shri Kogje opposed the petition and submitted that the petitioner is involved in large number of cases including house-breaking and the order of detention is just and proper.

6. Having heard the learned advocates appearing for the parties, I find that the ratio laid down by the Division Bench of this Court in the case of Ashokbhai Jivraj@Jivabhai Solanki v.Plice Commissioner, Surat & ors. (supra) would apply. It would be at the best of question of law and order and not the question of public order looking to the nature of allegations made against the petitioner. The opinion of the

authority, therefore, being unsustainable, the detention order is quashed.

7. I have no hesitation in declaring the detention illegal, since I find that the authorities have formed its opinion which cannot be sustained in the eye of law.

8. In the result, the petition is allowed. The order of detention, therefore fails and is hereby quashed. Rule is made absolute. No order as to costs.

9. Since the petition is being allowed and the detention order is quashed, it is further directed that the detenu shall be released forthwith if there is no other detention or criminal case against him.

Direct service is permitted.

[AKIL KURESHI, J.]

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